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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

(Oral Argument Requested)

PLAINTIFF'S MOTION IN LIMINE
NO. 3 TO PRECLUDE EVIDENCE OF
UNRELATED MEDICAL
CONDITIONS

(Assigned to the Honorable David G.
Campbell)

(Tinlin Bellwether Case)

Plaintiffs move this Court *in limine* for an order precluding the introduction of evidence or argument concerning Plaintiff Debra Tinlin's medical conditions that are unrelated to her IVC filter and the injuries she alleges she sustained as a result of the filter's failure. Any such evidence is inadmissible under Federal Rules of Evidence 401 and 403 because it is irrelevant to issues of causation and damages, and its prejudicial effect substantially outweighs any potential probative value.

The injuries that Mrs. Tinlin has put at issue in this case are serious and directly attributable to the failure of her Recovery filter. In short, Mrs. Tinlin was implanted with a Recovery filter on May 7, 2005. She soon experienced lower back pain following placement of the filter. On June 10, 2013, she was brought to the emergency room, where she was diagnosed with cardiac tamponade, cardiogenic shock, and multi-organ failure.

1 The filter had fractured, and two struts had embolized to her heart, requiring open
2 cardiothoracic surgery. Her sternum did not fuse properly following that surgery, causing
3 ongoing complications, and she has ongoing injuries related to her prolonged intubation.
4 Filter fragments also remain in Mrs. Tinlin's lung.

5 In addition to these injuries from her filter, Mrs. Tinlin suffers from a variety of
6 medical conditions that either predate the implantation and failure of her Recovery filter,
7 or have nothing to do with either the Recovery filter's implantation, failure, and her
8 resulting injuries. Bard, however, has refused to stipulate that evidence of Mrs. Tinlin's
9 unrelated medical conditions should not be introduced at trial. These unrelated conditions
10 include:

- 11 • Graves' disease
- 12 • surgical resection of thyroid gland
- 13 • hypothyroidism
- 14 • Sjogren's syndrome
- 15 • Hypertension
- 16 • uterine and rectal prolapse
- 17 • fibromyalgia and rheumatoid arthritis
- 18 • pernicious anemia

19 Bard has not, and cannot, show that any of these conditions are related to any issue
20 in this case. There is no plausible argument, for example, that Sjoren's syndrome, an
21 autoimmune disease that affects saliva glands, has anything do with Mrs. Tinlin's filter or
22 her filter-related injuries. Mrs. Tinlin's uterine and rectal prolapses predated her visit to
23 the ER in June 2013 and subsequent open-heart surgery. Her thyroid-related conditions
24 (of which Graves' disease is one) predate her filter-related injuries as well; her thyroid
25 was removed when she was seventeen years old. She is not claiming that the filter caused
26 these conditions, or seeking damages relating to them. Injuries caused by the Recovery
27 filter's failure here are distinct from those related to Mrs. Tinlin's preexisting conditions,
28 and Bard should not be permitted to manufacture a fact issue as to potential alternative

1 explanations of ongoing pain or medical complications where there is no basis.

2 This Court previously granted Plaintiff Jones' motion *in limine* to preclude
3 introduction of evidence of the use of NSAID's to treat migraines, as well as gastric
4 complications related to their use. *See* Doc. No. 10947, at 4-5. The Court also granted
5 Plaintiff's motion concerning other unrelated medical issues (hypertension and B12
6 deficiency) where Bard could not show – as it cannot here – that the issues concerned
7 causation or damages. *Id.* at 2. Here, Bard has refused even to stipulate that hypertension
8 is unrelated and evidence of it should not be introduced, even following the Court's ruling
9 in *Jones*.

10 None of these conditions bear on Mrs. Tinlin's purported need for a filter in the
11 first place, whether the filter was defectively designed, whether Bard failed to provide
12 adequate warnings concerning the filter's safety and effectiveness, or the damages that
13 Mrs. Tinlin has suffered as a result of the filter's failure. They are irrelevant under Rule
14 401 of the Federal Rules of Evidence. Further, even if this evidence were relevant, it is
15 inadmissible under Rule 403 of the Federal Rules of Evidence, because it is likely to
16 mislead the jury, create a confusion of issues, and waste time. Bard should not be
17 permitted to use Mrs. Tinlin's relatively complicated medical profile to confuse the jury or
18 distract its attention from the core issues in this case.

19 For these reasons, the Court should preclude any introduction of Mrs. Tinlin's
20 medical conditions that are unrelated to the implantation of her Recovery filter and the
21 injuries that she claims relating to the filter.

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1 RESPECTFULLY SUBMITTED this 29th day of March, 2019.

2 BEUS GILBERT, PLLC.

3 By: /s/ Mark S. O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Jessica Gallentine